Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

WILLIAM H. VIEHWEG, Plaintiff, Appellant, Petitioner, vs. JOSEPH F. DEVEREUX, JR., Defendant, Appellee, Respondent.	)	Cause No.: 91-1220 October Term, 1991

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SUPREME COURT, U.S.

RESPONSE OF RESPONDENT JOSEPH F. DEVEREUX, JR. TO THE MOTION OF PETITIONER TO STRIKE AND FOR SANCTIONS

COMES NOW Respondent Joseph F. Devereux, Jr., by and through his attorneys, pursuant to Supreme Court Rule 21.4 files his response in opposition to the Motion of Petitioner to Strike and for Sanctions.

For grounds of said response, Respondent states:

1. On February 24, 1992, Respondent received through regular mail, the Motion of Petitioner to Strike and for Sanctions.

2. Petition cites Supreme Court Rule 24.6 as the basis for his Motion to Strike and for Sanctions apparently arguing that this Court should strike irrelevant matters from Respondent's Brief in Opposition to Petitioner's Writ of Certiorari.

3. Petitioner's reliance on Supreme Court Rule 24.6 to strike irrelevant matters in Respondent's Brief in Opposition is inappropriate as Rule 24.6 governs the contents of all briefs on the merits of a particular case. Consequently, such rule cannot be the basis for a Motion to Strike portions of a Respondent's Brief in Opposition to a Petition for Writ of Certiorari or for a Motion for Sanctions.

4. Should, however, the Court find that Petitioner has an arguable basis upon which to bring his Motion to Strike and for Sanctions, such relief should be denied because Petitioner is arguing matters that are reserved for argument on the merits.

5. Further, should the Court entertain Petitioner's motions, Petitioner's relief requesting the striking of various portions of Respondent's Brief in Opposition to his Writ of Certiorari and for Sanctions should be denied since Petitioner misstates the record and the law. The fact that Petitioner instructed the Respondent to withdraw is relevant in that it is evidence indicative of the litigants' legal relationship. The Trial Court was not required to consider the facts surrounding Respondent's withdrawal from the representation of Petitioner in Respondent's Motion for Summary Judgment. Consequently, the Trial Court did not determine whether or not the circumstances surrounding Respondent's withdrawal were material, relevant, or irrelevant. Such matters lacked materiality in the Motion for Summary Judgment which was premised upon the Statute of Limitations, but still retain relevancy with respect to the overall case.

6. Further, should the Court entertain Petitioner's motions, Petitioner's argument that the record does not contain any reference to Respondent's consensual withdrawal is misleading and improper. There is ample support of record for Respondent's consensual withdrawal, as well as an admonishment from U.S. Dis-

trict Judge Hungate in the case styled RE/MAX of America, Inc. v. William H. Viehweg, Cause No. 85-0349C(3), (E.D.Mo. 1985), that Petitioner's consent to the withdrawal of Respondent, was the equivalent of discharging the best attorney for which to handle the case. Judge Hungate further rejected Petitioner's request for appointment of new counsel. Such statements are contained in the recording of the withdrawal proceeding which are currently stored in the U.S. District Court archives in Kansas City, Missouri. It is clear then, that the above and other pleadings in the case, support Respondent's consensual withdrawal from the representation of Petitioner. It appears that Petitioner misunderstands that the record can and does contain all pleadings and rulings of the Court and not simply limited to Petitioner's First Amended Petition.

7. In conclusion, the motion of Petitioner to strike portions of Respondent's Brief in Opposition to his Writ of Certiorari and Motion for Sanctions should be denied in that Petitioner bases his motions on Supreme Court Rule 24.6, which is inapplicable to Petitions for Writ of Certiorari. Further, the Motion of Petitioner to Strike and for Sanctions should be denied due to the fact that Petitioner is wrongfully arguing the merits of his case while his Petition for Writ of Certiorari is pending. Further, even if the Court considers the Motion of Petitioner to Strike and for Sanctions, such should be denied in that Petitioner fails to establish that any of the statements made by Re-

spondent in his Brief in Opposition were irrelevant in nature or not a matter of the record. Last, Respondent requests that sanctions be assessed against Petitioner and awarded to Respondent for requiring him to respond to groundless, baseless and frivolous motions.

WHEREFORE, Respondent, respectfully requests that the Motion of Petitioner to Strike and for Sanctions be denied, and that sanctions be assessed against Petitioner.

RONALD C. WILLENBROCK #18938
AMELUNG, WULFF & WILLENBROCK
Attorney for Respondent
515 Olive Street, Suite 1700
St. Louis, Missouri 63101
436-6757

CERTIFICATE OF SERVICE

I, Ronald C. Willenbrock, the undersigned, do under oath, say that a copy of the Response of Respondent Joseph F. Devereux, Jr. to the Motion of Petitioner to Strike and for Sanctions was mailed first class, prepaid, via the U.S. Mail, by myself, February 25, 1992 to: Mr. William H. Viehweg, pro se, 114 West 2nd South, Mt. Olive, Illinois 62069.

RONALD C. WILLENBROCK #18938

Subscibed to and sworn before me, a notary public, this 25th day of February, 1992.

NOTARY PUBLIC

My Commission Expires:

RCW/KDW/lat 2-24.42-454

ROBERT J. WULFF
NOTARY PUBLIC, STATE OF MISSOURI
MY COMMISSION EXPIRES 4/6/94
ST. LOUIS COUNTY